IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL CHINSKI, JR.,	§	
	§	No. 395, 2005
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0002017987
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: February 10, 2006
Decided: May 3, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

O R D E R

This 3rd day of May 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Michael Chinski, filed an appeal from the Superior Court's August 9, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) At a Superior Court bench trial in January 2002, Chinski was found guilty of Murder in the First Degree.[1] He was sentenced to life in

[1] Chinski waived his right to a trial by jury. Chinski initially proceeded pro se at trial with the assistance of standby counsel. Subsequently, at Chinski's request, standby

prison without the possibility of probation or parole. On direct appeal, this Court affirmed Chinski's conviction and sentence.[2]

(3) In this appeal, Chinski claims that his trial counsel provided ineffective assistance by failing to investigate the crime scene, have DNA testing done, investigate phone records, investigate his mental health history, investigate his wife's life insurance policy and title to the couple's residence, investigate his therapist's records, object to prosecutorial misconduct, and object to his daughter's videotaped deposition testimony. Chinski also claims that there was insufficient evidence presented at trial to support his conviction and, finally, claims that the Superior Court judge who presided over his trial should not have decided his postconviction motion. To the extent Chinski has not argued other claims that were raised in his postconviction motion, those claims are deemed abandoned and will not be addressed by this Court.[3]

(4) In order to prevail on his claim of ineffective assistance of counsel, Chinski must show that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's

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counsel was appointed to represent him. The Superior Court judge, sitting as the trier of fact, determined that Chinski had strangled his wife to death in the presence of the couple's daughter.

[2] *Chinski v. State*, Del. Supr., No. 43, 2002, Walsh, J. (Aug. 14, 2002).

[3] *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Chinski also claimed that his indictment was defective.

unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.[4] Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."[5] This Court consistently has held that a defendant must set forth concrete allegations of actual prejudice and substantiate them, or risk summary dismissal.[6]

(5) While Chinski claims that his counsel provided ineffective assistance by failing to investigate the crime scene, have DNA testing done, investigate phone records, investigate his mental health history, investigate his wife's life insurance policy and title to the residence, and investigate his therapist's records, he does not state with specificity how these alleged errors on the part of his counsel resulted in prejudice to him. In the absence of any evidence that counsel's investigation of these matters would have altered the outcome of the trial, we find these claims to be without merit.

(6) While Chinski claims that the prosecution engaged in various forms of misconduct, our review of the record does not reveal any such misconduct. As such, we find no error on the part of Chinski's counsel in

[4] *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).
[5] *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).
[6] *Younger v. State*, 580 A.2d 552, 555-56 (Del. 1990).

not raising an objection on that ground. While Chinski claims that his daughter's videotaped testimony should not have been admitted into evidence, he provides no factual support for that claim. As such, we find no error on the part of Chinski's counsel in not raising an objection to the admission of Chinski's daughter's testimony.

(7) Chinski next claims that there was insufficient evidence presented at trial to support his conviction. Chinski appears to have made essentially the same argument in his direct appeal. To the extent this claim was formerly adjudicated, it is procedurally barred in this proceeding unless Chinski can demonstrate that reconsideration of the claim is warranted in the interest of justice.[7] We do not find that Chinski has demonstrated any basis for reconsideration of this claim.[8]

(8) Chinski's final claim is that the Superior Court judge who presided over his trial should not have decided his postconviction motion. Essentially, Chinski argues that the judge should have disqualified himself from considering the motion on the ground of a "personal bias or prejudice concerning" him.[9] We find no basis for disqualification of the judge in this

[7] Super. Ct. Crim. R. 61(i) (4).
[8] To the extent that Chinski did not assert this argument in his direct appeal, it is procedurally defaulted in this proceeding. Super. Ct. Crim. R. 61(i) (3). Moreover, we do not find any miscarriage of justice that would excuse the procedural default. Super. Ct. Crim. R. 61(i) (5).
[9] Del. Code of Judicial Conduct, Canon 3(C)(1)(a).

case. There is no evidence of bias or prejudice stemming from "an extrajudicial source" resulting "in an opinion on the merits other than what the judge learned from his participation in the case."[10] The record reflects no personal animosity toward Chinski on the part of the judge. We, therefore, find this claim to be without merit.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[10] *Los v. Los*, 595 A.2d 381, 384 (Del. 1991) (citing *U.S. v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)).